

financial resources to pursue the claims it filed in this action. By Order dated September 19, 2006, the Court allowed the matter to be dismissed with prejudice, but granted Defendants leave to make an application for attorneys' fees.

The Court has reviewed Magistrate Judge Arleo's Report and Recommendation, as well as the papers submitted by the parties on this matter. The Court accepts Defendants' objections as timely, but does not find that Defendants' objections support a finding that these are "exceptional circumstances" for the purpose of awarding attorneys' fees to Defendants.

It is within the Court's discretion to award fees and expenses. *See Machinery Corp. of America v. Gullfiber AB*, 774 F.2d 467, 471 (Fed. Cir. 1985). An "exceptional" case may involve litigation misconduct, bad faith litigation or a frivolous suit. *See Stephens v. Tech International, Inc.*, 393 F.3d 1269, 1273 (Fed. Cir. 2004). "A frivolous infringement suit is one which the patentee knew or, on reasonable investigation, should have known was baseless." *Id.* at 1273-74 (quoting *Haynes Int'l Inc. v. Jessop Steel Co.*, 8 F.3d 1573, 1579 (Fed. Cir. 1993)).

In this instance, given the totality of the circumstances, the Court does not find that this was a frivolous infringement suit or an otherwise bad faith litigation. As expressed in Magistrate Judge Arleo's Report and Recommendation, the events in this suit do not present "exceptional circumstances" that would warrant the award of attorneys' fees and expenses.

The Court having reviewed the Report and Recommendation and the other documents on file on this matter; and for good cause shown;

It is on this 11th day of July 2007, **ORDERED** that the Report and Recommendation of Magistrate Judge Arleo, filed May 22, 2007 is hereby **ADOPTED** as the conclusions of law of this Court.

Defendants' motion for attorneys' fees and expenses is hereby **DENIED**.

s/Susan D. Wigenton, U.S.D.J.

Orig: Clerk
cc: Judge Arleo
Parties